

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Atsushi MIYAWAKI

Examiner : Rita MITRA

Serial No : 10/516,317

(National Stage of PCT/JP2003/07336)

Group Art Unit: 1656

I.A. Filed : June 10, 2003

For : CHROMOPROTEIN

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop AMENDMENT  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir:

This paper responds to the Restriction Requirement mailed April 24, 2007, which sets a one-month period for response, to end May 24, 2007. Applicants submit that no fee should be due for consideration of this Response; however, if the Office deems any additional fee due for consideration of this Response, authorization is expressly given to charge such fee to Deposit Account No. 19-0089.

Restriction Requirement

In the Restriction Requirement, the Examiner alleges that ten distinct species of generic inventions are contained in this application, namely:

- I. Claims 1-9 and 16-18, drawn to a chromoprotein derived from Cnidopus japonicus comprising amino acid sequence of SEQ ID NO: 1 and mutants thereof; a fusion protein, a kit comprising the chromoprotein and a method for analyzing a physiologically active substance using said protein.

- II. Claims 10-15 and 18, drawn to a DNA encoding the amino acid sequence of SEQ ID NO: 1 and mutants thereof, wherein said DNA comprises a nucleic acid sequence of SEQ ID NOS: 2, 12, 14, 16, 18, 20, and 22; a vector, transformant, a kit comprising the DNA encoding the chromoprotein.

Election

Applicants elect, with traverse, Group II, i.e., claims 10-15 and 18, *with traverse*.

Traverse

Notwithstanding the election of Group II in order to be responsive to the Restriction Requirement, Applicants respectfully traverse the Examiner's requirement for restriction.

Applicants respectfully point out that the claims of Group II, allegedly drawn to a polynucleotide, should be considered with the claims drawn to the protein encoded by said polynucleotide, i.e., the claims of Group I. Applicants refer to the "PCT International Search and Examination Guidelines" Part III, Chapter 10, example 39, which states that a claimed DNA molecule encoding protein X, shares a corresponding technical feature with the protein X. Accordingly, unity of invention is present between claims related to a DNA molecule and claims related to the protein encoded by said DNA molecule.

Additionally, Applicants respectfully note that the Examiner's conclusions relating to a lack of unity of invention are based entirely upon a finding that the subject matter of claim 1 is found in the prior art. Accordingly, Applicants respectfully submit that the Office will be required to withdraw the Restriction Requirement at least for claims dependent on claim 1, upon reciting subject matter in claim 1 that is not disclosed in the prior art. Still further, Applicants respectfully reserve the right to rebut any statements that the Office has made relating to the disclosure of the present invention in the prior art.

In view of the foregoing, it is respectfully requested that the Examiner reconsider the requirement for restriction, and at the very least, consider the claims of elected Group II with the claims of Group I.

Applicant hereby authorizes the charging of any additional required fees necessary for consideration of the documents cited herein to Deposit Account No. 19-0089.

Respectfully submitted,  
Atsushi MIYAWAKI

  
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May 22, 2007  
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